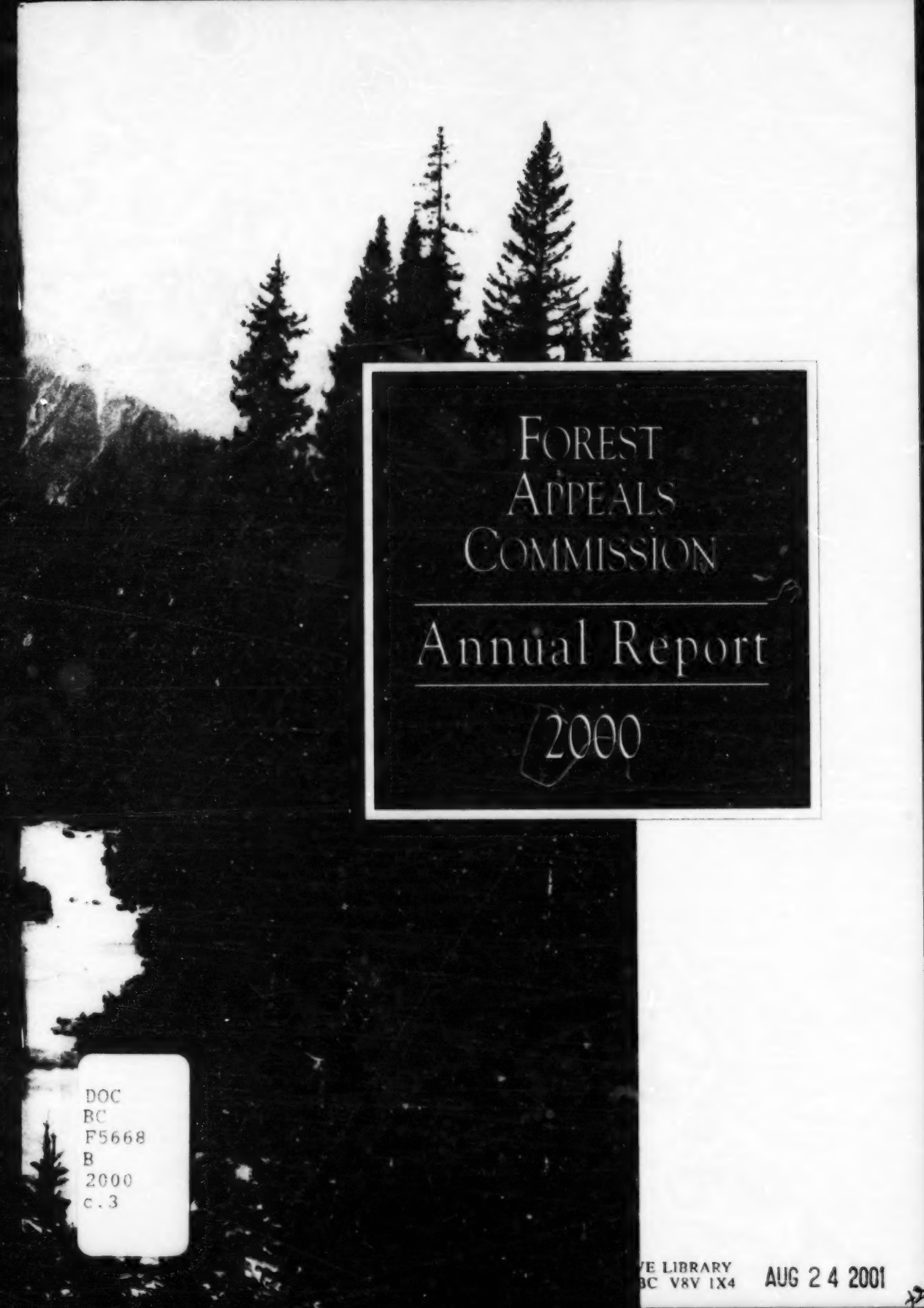

Forest Appeals Commission

Annual Report

2000

DOC
BC
F5668
B
2000
c.3

VE LIBRARY
BC V8V 1X4
AUG 2 4 2001

AR 2000

Table of Contents

Introduction		5
The Commission		7
	Commission Membership	7
	Administrative Law	8
	The Commission Office	8
	Commission Resources	8
	Policy on Freedom of Information and Protection of Privacy	8
The Appeal Process		9
	Appeals Under the *Forest Practices Code of British Columbia Act*	9
	Appeals Under the *Forest Act*	9
	Appeals Under the *Range Act*	10
	Commencing an Appeal	10
	Filing an Appeal	11
	Written Hearing Procedure	12
	Oral Hearing Procedure	12
	The Hearing	14
	The Decision	14
Legislative Amendments Affecting the Commission		16
	Nisga'a Final Agreement Act	16
Evaluation and Recommendations		17
Appeals Filed		18
Decisions		22
Appeals of Decisions		29
Statistics		31
APPENDIX I	Legislation and Regulations	34
APPENDIX II	Administrative Review and Appeal Procedure Regulation	46

Canadian Cataloguing in Publication Data
British Columbia. Forest Appeals Commission.
Annual report. — 1995-

Annual
Issue for 1995 covers: June 15 to Dec. 31.
ISSN 1205-7606 = Annual report - British Columbia. Forest Appeals Commission

1. British Columbia. Forest Appeals Commission - Periodicals. 2. British Columbia. Forest Practices *Code* of British Columbia Act - Periodicals. 3. Forestry law and legislation - British Columbia - Periodicals. 4. Administrative remedies - British Columbia - Periodicals. I. Title.

KEB345.A7F67 354.7110082'33806 C96-960175-1
KF1750.A55F67

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "*Code*") which came into effect on June 15, 1995. The Commission hears appeals from decisions made under the *Code*, and, as of April 1999, appeals from decisions made under the *Forest Act* and the *Range Act*. The Commission is also required to make recommendations to the Lieutenant Governor in Council (Cabinet) about review and appeal procedures under these statutes.

This is the sixth annual report of the Forest Appeals Commission. The information contained in this Annual Report covers the twelve month period from January 1, 2000 to December 31, 2000.

This report describes the structure and function of the Commission and how the appeal process operates. As required by the *Administrative Review and Appeal Procedure Regulation*, this report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period;
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the *Code*, the *Forest Act*, and the *Range Act* and their regulations respecting reviews and appeals.

Finally, summaries of appeals filed and the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and relevant sections of the *Code*, the *Forest Act*, the *Range Act*, and the *Administrative Review and Appeal Procedure Regulation* are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the internet, and at the following libraries:

- Legislative Library
- Ministry of Environment, Lands and Parks Library
- Ministry of Forests Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Information about the Forest Appeals Commission is available from the Forest Appeals Commission office, local offices of the Ministry of Forests, selected libraries and on the internet.

More detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual which can be obtained from the Commission office or viewed on the internet. Also, please feel free to contact the office with any questions, or for additional copies of this report. The Commission can be reached at:

Forest Appeals Commission
Fourth Floor, 747 Fort Street
Victoria, British Columbia

Telephone: (250) 387-3464
Facsimile: (250) 356-9923
Internet: www.fac.gov.bc.ca

Mailing address:
Forest Appeals Commission
PO Box 9425 Stn Prov Govt
Victoria, British Columbia V8W 9V1

The Commission

The Forest Appeals Commission is an independent agency which provides a forum to appeal certain decisions made by government officials. The Commission is also responsible for providing Cabinet with an evaluation of the appeal and review processes, and with recommendations for amendments to the *Code*, the *Forest Act*, the *Range Act*, and the regulations respecting reviews and appeals.

Commission Membership

Commission members are appointed by Cabinet. Their appointments may be for a term of up to three years.

Members of the Commission represent diverse business and technical experience and hold a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members.

The Commission for this report period consisted of the following members:

MEMBER	FROM
Alan Andison, Chair (from July 27, 2000)	Victoria
Toby Vigod, Chair (to July 27, 2000)	Victoria
Gerry Burch, Vice-chair	Vancouver
Bruce Devitt	Victoria
Kristen Eirikson	Victoria
Barbara Fisher	Vancouver
James Hackett	Nanaimo
Jack Krantz	Prince George
Jeanette Leitch	Vancouver
Katherine Lewis	Prince George
Patricia Marchak	Vancouver
Brenda Milbrath	Victoria
David Ormerod	Victoria
Stephen Potter	North Vancouver
Howard Saunders	Vancouver
Lorraine Shore	Vancouver
Geza Toth	Vernon
David Walkem	Spences Bridge

Administrative Law

Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that old ones were. The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly, giving each party a chance to explain its position.

The Commission Office

The Commission office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board.

The Environmental Appeal Board is an independent tribunal which hears appeals from administrative decisions made under six statutes: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act*, the *Commercial River Rafting Safety Act*, and the *Health Act*.

Until April 1999, the Forest Appeal Board heard appeals from administrative decisions made under the *Forest Act* and the *Range Act*. The Commission office provided administrative support to the Board until that time. Legislative changes came into force in April 1999, which provide that the Commission now hears appeals under the *Forest Act* and the *Range Act*. However, the Board continues to hear appeals that were filed before the legislative changes came into force.

Each of the tribunals sharing the office operates completely independently of one another. Supporting several tribunals through one administrative office gives them access to greater resources while, at the same time, cutting down on bureaucracy and costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2000/2001 budget for the Forest Appeals Commission was $408,000.

The fiscal 2000/2001 budget for the shared office and staff was $1,102,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Commission is subject to section 163 of the Code, which deals with confidentiality and disclosure, and the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

The Appeal Process

Appeals Under the *Forest Practices Code of British Columbia Act*

Not all determinations made under the Code can be appealed to the Commission. The Code specifies that only certain types of determinations are appealable. These include the following:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the Code, regulations, standards or an operational plan;
- remediation orders and stop work orders; and,
- notices of determination that a person contributed to fire.

These types of determinations cannot be appealed to the Commission unless they have first been reviewed by a reviewer. The review of certain specified determinations may be initiated by the Forest Practices Board or by a person subject to the determination, or both. The Forest Practices Board alone may request a review regarding approval or amendment of a forest development plan or range use plan. The Forest Practices Board may also request a review of a failure to make a determination in certain instances, and if the reviewer makes a determination where there was not one previously, then that new decision may also be appealed to the Commission. Further information regarding the review process may be obtained from the local offices of the Ministry of Forests or the Ministry of Environment, Lands and Parks.

Appeals Under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of the Act and include certain determinations, orders and decisions made by district or regional managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester may be appealed to the Commission without prior review. However, determinations, orders or decisions

made by a district or regional manager, or employee of the Ministry, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals Under the *Range Act*

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made disagrees with the review decision, that person may appeal the review decision to the Commission.

Further information regarding the review processes under the *Forest Act* and the *Range Act* may be obtained from the local Ministry of Forests' offices.

Commencing an Appeal

Notice of Appeal

To commence an appeal, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within three weeks of the date the review decision is served on the person. The Notice of Appeal must contain the name and address of the appellant, the reasons why the appellant believes that the review decision is incorrect (the grounds for appeal), and the type of order the appellant is seeking from the Commission. The Notice of Appeal should also include the name and mailing address of the government officials responsible for the original determination and the review decision. In some cases, the review decision must be provided.

If the Commission does not receive the Notice of Appeal within three weeks of the review decision, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the deadline either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the determination, and the review decision being appealed, that it will be the respondent in the appeal.

An appeal can be commenced under the *Code* by:

The person who was the subject of a decision

■

The Forest Practices Board

Appealable decisions under the *Code* are:

Administrative decisions
that have undergone review by a reviewer

■

Review decision where there was a failure to make an administrative decision (can only be commenced by the Forest Practices Board)

An appeal can be commenced under the *Forest Act* or *Range Act* by:

The person in respect of whom a determination, order or decision was made

■

The person in respect of whose agreement the determination, order or decision was made

Appealable decisions under the *Forest Act* or *Range Act* are:

Administrative decisions by a district or regional manager, or by employees of the Ministry, that have undergone review by a reviewer

Administrative decisions by the Chief Forester

A Notice of Appeal consists of:

the appellant's name and address, along with the name and address of anyone representing him or her

■

the address to which the appellant wants notice and other official documents to be delivered

■

the name and mailing address of the government official responsible for the review decision

■

the grounds for appeal

■

description of the relief requested
(i.e. what decision the appellant would like the Commission to make)

■

if the appeal is from a determination as varied by the reviewer,
a copy of the review decision must be provided with the Notice of Appeal

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. Where the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

Intervenors

The *Code* enables a person not directly affected by a decision to be invited or permitted by the Commission to participate as an intervenor to the extent that the Commission allows. The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Persons wishing to take part in an appeal under the *Code* as an intervenor should inform the Commission of their desire, and outline the reasons for their participation in the appeal.

If the Commission allows a person to participate as an intervenor, it will give written notice to the intervenor, and the parties involved in the appeal, specifying the extent to which the intervenor will be permitted to take part in the hearing.

Type of Hearing

The Commission has the authority to conduct a new hearing and make a new decision on a matter before it (i.e. hearing *de novo*).

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the submissions will be made by all parties and intervenors. The appellant will provide its submissions first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions are not to contain new evidence.

Oral Hearing Procedure

As required by the *Administrative Review and Procedure Regulation*, the Commission will, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission will also set the date, time and location of the hearing. If the appeal is under the *Forest Act* or the *Range Act*, the hearing must be held within 45 days from the time the Commission receives the Notice of Appeal unless all parties agree to a period other than 45 days.

When the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission

office in Victoria, a combination of both, or anywhere in the province. The Commission will decide where the hearing will take place on a case by case basis.

Once a hearing is scheduled, the parties will be asked to provide certain materials to the Commission.

Statement of Points

To help identify the main issues to be addressed in the hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent and all other parties are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:

  (i) the substance of the appellant's objections to the decision of the respondent;

  (ii) the arguments which the appellant will present at the hearing;

  (iii) any legal authority or precedent supporting the appellant's position; and,

  (iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:

  (i) the substance of the respondent's objections to the appeal;

  (ii) the arguments which the respondent will present at the hearing;

  (iii) any legal authority or precedent supporting the respondent's position; and,

  (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda which is set by the participants. The parties are given an opportunity to resolve the issues themselves giving them more control over the process.

If the issues are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon and the appeal will move to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attends the hearing, the party may write to the Commission asking that a summons be issued and providing their reasons for the request.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: parties are sworn or affirmed, evidence is presented and witnesses may be cross-examined.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings of the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and then will determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide between the rights of the parties.

The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act* or the *Range Act*, the Commission is required to serve its decision on the parties within 21 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within 3 weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.

Legislative Amendments Affecting the Commission

On July 29, 1997, Bill 47, the *Forest Statutes Amendment Act*, 1997 was passed. The purpose of Bill 47 is to streamline forest legislation in the province. It amends sections of the *Forest Act*, the *Range Act* and the *Code*. Bill 47 amendments concerning the review and appeal sections of these statutes came into force in April 1999. Before these amendments came into force, the Commission heard appeals under the *Code*, while the Forest Appeal Board heard appeals under the *Forest Act* and the *Range Act*. Appeals under all three statutes are now heard by the Commission.

Further amendments related to the review, appeal and enforcement sections of the *Code* are expected to come into force in the near future.

Nisga'a Final Agreement Act

The *Nisga'a Final Agreement Act* came into force in May 2000 after receiving royal assent in both the British Columbia Legislature and the Parliament of Canada. Section 53, chapter 5 of the Schedule to the *Nisga'a Final Agreement Act* provides that:

53 During the transition period [the 5 year period commencing on the effective date], the Nisga'a Nation may commence, or intervene in, an appeal to the Forest Appeals Commission in respect of:

(a) A determination of whether a person has contravened forest practices legislation on or affecting Nisga'a Lands; or

(b) The determination of whether to impose a penalty referred to in paragraphs 51 and 52 and the amount of that penalty.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission is also required to make recommendations on amendments to the *Code*, *Forest Act* and the *Range Act* and their regulations respecting reviews and appeals.

The number of appeals filed in 2000 is more than double the number filed in 1999, and is almost double the number filed in 1998. This increase is partly due to changes enacted under Bill 47, 1997, and brought into force in 1999, which gave the Commission jurisdiction over appeals under the *Forest Act* and *Range Act*. There has also been a significant increase in the number of appeals filed under the *Forest Act* as compared to 1999. Most of the appeals filed under the *Forest Act* in 2000 involved disputes over stumpage rate determinations.

Despite the increase in the number of appeals filed with the Commission in 2000, the number of appeals filed is still lower than the number filed in each of 1997 and 1996.

The Commission has found that the expansion of its jurisdiction to include appeals under the *Forest Act* and *Range Act*, as a result of the legislative changes made in 1999, provided for a more effective and efficient appeal process during 2000.

However, many of the other changes that were enacted under Bill 47 still have not been brought into force. The Commission is accordingly unable to provide any comment on those provisions at this time.

Appeals Filed

As noted earlier, the Commission's jurisdiction was expanded in 1999 to include appeals under the *Forest Act* and the *Range Act*. Therefore, no appeals were filed with the Forest Appeal Board in 2000.

Appeals filed under the *Code*, the *Forest Act*, and the *Range Act* have been reported separately.

In 2000, 18 appeals were filed with the Commission. Eight of these appeals were filed under the *Code*, and ten were filed under the *Forest Act*. There were no appeals filed under the *Range Act* in 2000.

Summaries of each of the appeals that were filed are provided below. The status of each of the appeals as of December 31, 2000, is provided after each summary.

Appeals under the *Code*

2000-FOR-001 Slocan Forest Products Ltd. v. Government of British Columbia

Appeal filed January 13, 2000

Slocan Forest Products Ltd. filed an appeal against a review decision upholding a determination that it had failed to construct a drainage system so that it functioned in accordance with section 13(1)(c) of the *Forest Road Regulation*.

STATUS: Appeal abandoned

2000-FOR-002 Alan Kendall v. Government of British Columbia

Appeal filed February 11, 2000

Alan Kendall filed an appeal against a review decision varying a determination. The review decision upheld the penalty and the finding that Mr. Kendall had contravened sections 67(1) and 96(1) of the *Code* by damaging reserve trees outside of the approved yarding corridors, but rescinded a finding that he had contravened section 67(2)(d) of the *Code*.

STATUS: Hearing held May 19, 2000
Decision issued July 14, 2000

2000-FOR-003 James Davidson v. Government of British Columbia

Appeal filed February 21, 2000

James Davidson filed an appeal against a review decision upholding a determination that he had contravened section 96(2) of the *Code* by harvesting Crown timber after the expiry of a timber sale licence.

STATUS: Appeal abandoned

2000-FOR-004 Larry Jarnagin v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed March 30, 2000

Larry Jarnagin filed an appeal against a review decision varying a determination. The review

decision upheld the finding that Mr. Jarnagin had contravened sections 96(1) and 97(2) of the *Code* by harvesting Crown timber without authorization and failing to mark the boundaries of private land, but reduced the penalty from $46,899.44 to $20,000.

STATUS: Appeal abandoned

2000-FOR-005 Forest Practices Board v. Government of British Columbia (Crestbrook Forest Industries Ltd., Third Party)

Appeal filed April 7, 2000

The Forest Practices Board filed an appeal against a review decision rescinding a determination that Crestbrook Forest Industries had contravened section 67(1) of the *Code* in failing to adequately treat stumps infected with root rot disease in accordance with the silviculture prescription.

STATUS: Consent Order issued October 23, 2000

2000-FOR-006 Klaus Orleans v. Government of British Columbia

Appeal filed August 18, 2000

Klaus Orleans filed an appeal against a review decision varying a determination. The review decision upheld the finding that Mr. Orleans had contravened sections 96(1) of the *Code* by harvesting timber above the high water mark of a river without authorization, but reduced the penalty from $1,824.08 to $1,582.84.

STATUS: Hearing held on February 20, 2001

2000-FOR-008 International Forest Products Limited v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed December 1, 2000

International Forest Products Limited filed an appeal against a review decision upholding a determination that there were five contraventions of section 51(2)(a) of the *Code* resulting from the destruction of five culturally modified trees. The review decision also upheld a penalty of $12,500.

STATUS: Hearing scheduled for May 8–9, 2001

2000-FOR-009 Forest Practices Board v. Government of British Columbia (Husby Forest Products Ltd., Naden Harbour Timber Ltd., Sitkana Timber Ltd., Dawson Harbour Logging Company Ltd., and Timber West Forest Limited, Third Parties)

Appeal filed December 18, 2000

The Forest Practices Board filed an appeal against a review decision upholding two determinations. Both determinations concerned approval of a forest development plan covering five licences held by the third parties.

STATUS: Hearing scheduled for April 30–May 4, 2001

Appeals under the *Forest Act*

2000-FA-001 Robin Brekkas v. Government of British Columbia

Appeal filed January 31, 2000

Robin Brekkas filed an appeal against a review decision varying a determination. The review decision rescinded the contravention of section 65(1)(b) of the *Forest Act*, but upheld the finding that Mr. Brekkas had contravened sections 138(1), 138.1(1) and 138.1(2) of the *Forest Act* by harvesting Crown timber in 1994 without authorization. The penalty of $34,761.62 was also upheld.

STATUS: Hearing held May 25–26, 2000
Decision issued July 18, 2000

2000-FA-002 Calvin Carter v. Government of British Columbia

Appeal filed February 15, 2000

Calvin Carter filed an appeal against a review decision confirming a determination that Mr. Carter had contravened sections 138(1), 138.1(2) and 65(1)(b) of the *Forest Act* by harvesting Crown timber in 1994 without authorization. The penalty of $34,761.62 was also upheld.

STATUS: Hearing held May 24, 2000
Decision issued July 18, 2000

2000-FA-003 Weyerhaeuser Company Limited v. Government of British Columbia

Appeal filed February 18, 2000

Weyerhaeuser Company Limited filed an appeal against a review decision upholding three Stumpage Advisory Notices issued by the Regional Appraisal Coordinator.

STATUS: Hearing held May 16, 2000
Decision issued May 29, 2000

2000-FA-004 Canadian Forest Products Ltd. v. Government of British Columbia

Appeal filed February 25, 2000

Canadian Forest Products Ltd. filed an appeal against a review decision upholding three Stumpage Advisory Notices issued by the Regional Appraisal Coordinator.

STATUS: Hearing held July 6–7, 2000
Decision issued July 28, 2000

2000-FA-005 Weyerhaeuser Company Limited v. Government of British Columbia

Appeal filed May 1, 2000

Weyerhaeuser Company Limited filed an appeal against a review decision concerning two Stumpage Advisory Notices.

STATUS: Appeal withdrawn

2000-FA-006 Weyerhaeuser Company Limited v. Government of British Columbia

Appeal filed August 4, 2000

Weyerhaeuser Company Limited filed an appeal against a review decision upholding the stumpage rate determination in two Stumpage Advisory Notices.

STATUS: Hearing scheduled for March 13–15, 2001

2000-FA-007 Kemess Mines Inc. and Royal Oak Mines Ltd. v. Government of British Columbia

Appeal filed August 4, 2000

Kemess Mines Inc. and Royal Oak Mines Ltd. filed an appeal against a review decision concerning stumpage rate determinations for three licences held by the appellants. The review decision held that the licensees had failed to file their request for review within the 21-day statutory review period. The review decision did not address whether the stumpage rates were calculated properly.

STATUS: Adjourned until 2001, new dates not yet confirmed

2000-FA-008 TFL Forest Limited v. Government of British Columbia

Appeal filed October 16, 2000

TFL Forest Limited filed an appeal against a review decision concerning stumpage rate determinations in six Stumpage Advisory Notices. The review decision directed the Regional Appraisal Coordinator to recalculate the stumpage rates.

STATUS: Hearing scheduled for April 5-6, 2001

2000-FA-009 Weyerhaeuser Company Limited v. Government of British Columbia

Appeal filed November 24, 2000

Weyerhaeuser Company Limited filed an appeal against a review decision upholding the stumpage rate determination in a Stumpage Advisory Notice.

STATUS: Hearing scheduled for April 10–11, 2001

2000-FA-010 Laurie Parker v. Government of British Columbia

Appeal filed August 23, 2000

Laurie Parker filed an appeal against a review decision upholding a determination. The review decision confirmed that Mr. Parker had contravened section 70(4)(d) of the *Code* by failing to meet the regeneration requirements for a cut block, and contravened section 111 of the *Forest Act* by failing to pay outstanding annual rent on a woodlot licence. The review decision also upheld the decision to suspend Mr. Parker's woodlot licence.

STATUS: Hearing held February 6–7, 2001
Decision issued February 26, 2001

Decisions

January 1, 2000 – December 31, 2000

The following are summaries of decisions rendered by the Forest Appeals Commission and the Forest Appeal Board during 2000.

The Commission issued ten decisions during 2000, including six under the *Code* and four under the *Forest Act*. Commission decisions on appeals under the *Code* and the *Forest Act* are reported separately. No decisions were issued under the *Range Act*.

Two decisions were issued by the Board in 2000. These decisions involved appeals that were filed before changes in the review and appeal legislation came into effect in April 1999.

Forest Appeals Commission

Appeals under the *Code*

99-FOR-02 Forest Practices Board v. Government of British Columbia (Gloria O'Brien, Third Party)
Decision Date: March 7, 2000
Panel: David Ormerod, James Hackett, Lorraine Shore

This was an appeal by the Forest Practices Board of a review decision which rescinded a Stop Work Order ("SWO") issued to Gloria O'Brien by a Ministry of Forests official. The SWO was issued to limit environmental damage caused by a perceived contravention of the terms of a Timber Sale Licence, a road permit, and section 13(1)(c)(vi) of the *Forest Road Regulation*. The perceived contraventions were related to the fact that sand from a reactivated road had slumped into fish-rearing streams. The Appellant requested that the SWO be referred back to the Reviewer for reconsideration.

The Appellant argued that the Reviewer did not consider all of the relevant evidence, and did not apply the correct legal test in rescinding the SWO. The Commission found that if the photographs taken during the first inspection of the site had been before the Reviewer his decision might have been different. The Commission also found that an engineering inspection should not have been dismissed by the Reviewer simply because it was obtained after the SWO was issued; it should have been considered to the extent that it assisted in determining the conditions present at the time the SWO was issued. Further, the Commission found that a "fisheries window" restricting the time for road construction was a major factor in allowing harvesting operations in the area. However, the Reviewer did not know about it because he was provided with an inaccurate copy of the road permit, which likely affected his finding that there was no contravention of the Timber Sale Licence. The Commission also found that the Reviewer should have enquired as to the conditions of the bid

proposal, Timber Sale Licence and road permit, to determine whether the road structure met the approved design.

The Commission found that it was unclear, on a balance of probabilities, whether the Reviewer applied the correct legal test in determining whether the SWO was justified. The correct legal test is whether it was reasonable for the official to believe that a contravention existed; the test is not whether a contravention in fact occurred. The Commission recommended that in the future, the Reviewer should set out the appropriate test in their decision.

The Commission reversed the Reviewer's decision of the SWO. The appeal was allowed.

99-FOR-05 Forest Practices Board v. Government of British Columbia (Takla Development Corporation Ltd., Third Party)
Decision Date: April 10, 2000
Panel: Toby Vigod, Katherine Lewis, Lorraine Shore

This was an appeal by the Forest Practices Board of a Review Panel decision referring a determination back to the District Manager. The District Manager levied a penalty of $32,800 against Takla for a contravention of section 67(2) of the *Code*. Talka had harvested trees within riparian management zones and riparian reserve zones that were to be reserved from harvesting according to the logging plan and silviculture plan for the area. The Review Panel found that subsections 67(1)(e) and (f) were a more appropriate basis for a finding of a contravention and recommended a penalty of $8,000. The Appellant sought an order from the Commission referring the matter back to the District Manager, with directions regarding the proper principles to be applied in setting the penalty.

The Commission found that either section 67(1) or section 67(2) could be used in this case and that the District Manager has the discretion to decide which section is appropriate. With respect to the penalty, the Commission considered section 117(4) of the *Code*, and found that while senior officials must "consider" or "take into account" economic benefit in assessing penalties, there is no obligation to remove all economic benefit derived from the contravention at issue. However, the Commission stated that, in most cases, given the purposes of the *Code* and administrative penalties, it will be appropriate to remove the entire economic benefit.

The Commission agreed with both parties that, in this case, the penalty should have removed the economic benefit that Takla derived from the contravention. Further, the Commission agreed that the Review Panel did not properly consider the factors listed in section 117(4) of the *Code* in assessing the penalty. Specifically, the Commission found no indication that the Review Panel had contemplated the environmental impact of the contravention.

Accordingly, the Commission rescinded the directions of the Review Panel, and referred the matter back to the District Manager with directions to: determine whether a violation of section 67(1) or 67(2) was more appropriate in the circumstances; assess a penalty which removes the economic benefit that Takla derived from the contravention; and, consider all of the relevant factors in section 117(4)(b), including the ecological impact of the contravention, in determining the appropriate penalty. The appeal was allowed, in part.

99-FOR-07 Gloria O'Brien v. Government of British Columbia
Decision Date: November 14, 2000
Panel: Alan Andison

Gloria O'Brien appealed a review decision that varied a determination of the District Manager. The review decision upheld the determination that Ms. O'Brien had contravened section 96(1) of the

Code by damaging or destroying crown timber without authorization, however, the penalty imposed was reduced from $100,000 to $80,242.17.

By consent of the parties, the Commission ordered that the appeal be allowed in part. The parties agreed to uphold the contravention of the *Code*, and to reduce the penalty to $9,725.41. The parties also agreed that Ms. O'Brien would pay the cost of a residue and waste assessment, in the amount of $17,267.27.

99-FOR-08 Slocan Forest Products Ltd. v. Government of British Columbia
Decision Date: July 14, 2000
Panel: Toby Vigod

This was an appeal by Slocan Forest Products Ltd. of a decision of a Review Panel varying a determination of a District Manager. The Review Panel upheld the District Manager's assessment of a $1,500 penalty for contraventions of section 64(1)(d) of the *Code* and sections 19 and 20(1)(e) of the *Forest Road Regulation* for deficiencies in the deactivation of a road. Slocan sought an order rescinding the contraventions of section 64(1)(d) of the *Code* and section 19 of the *Regulation*, arguing that the parties had agreed to this result in a Joint Submission provided to the Review Panel, and that the Panel should have accepted it.

The Commission found that the agreement reached by the parties in the Joint Submission was reasonable. The Commission noted that the District Manager was the person most familiar with the facts underpinning the contraventions and he had agreed to the statements made in the Joint Submission. As such, the Commission found that Slocan should be granted the relief it requested. The appeal was allowed.

2000-FOR-02 Alan Kendall v. Government of British Columbia
Decision Date: July 14, 2000
Panel: Kristen Eirikson

This was an appeal by Alan Kendall of a Review Panel decision varying a notice of determination which found that the Appellant contravened sections 67(1), 67(2)(d) and 96(1) of the *Code*, for damaging 199 reserve trees outside of the approved yarding corridors. The Review Panel upheld the contraventions of section 67(1) and 96(1) as well as the penalty of $2,603.91, which had been assessed for the section 67(1) violation, but rescinded the section 67(2)(d) violation. The Appellant sought an order rescinding all contraventions and penalties.

The Commission found that contraventions of the *Code* did occur, in that the Appellant damaged and destroyed Crown timber without authorization contrary to section 96(1). The Commission found that the Appellant had not made out any justifiable defence to this contravention. The Commission also found that by contravening section 96(1), the Appellant also contravened section 67(1) of the *Code*. The Commission found that as only one penalty was assessed, and provided that the Ministry of Forests recorded the contravention in the Appellant's performance record as a single legal prohibition, there was no unfairness. However, the Commission found it inappropriate to consider past investigations as "contraventions" when making or reviewing a determination.

The Commission found the size of the assessed penalty to be appropriate, and even very low in the circumstances. The appeal was dismissed.

2000-FOR-05 Forest Practices Board v. Crestbrook Forest Industries Ltd. and Government of British Columbia
Decision Date: October 23, 2000
Panel: Alan Andison

The Forest Practices Board appealed a review decision that rescinded the determination of the District Manager of the Invermere Forest District. The District Manager had determined that Crestbrook Forest Industries Ltd. had contravened section 67(1) of the *Code* in failing to adequately treat stumps infected with Armillaria "root rot" in accordance with the Silviculture Prescription. The Review Panel found, based on the evidence presented, that Crestbrook had in fact adequately marked and treated root rot in the cut block as per the requirements of the Silviculture Prescription.

By consent of the parties, the Commission ordered that the appeal be dismissed. The parties agreed, on the basis of new evidence that had become available, that Crestbrook had fulfilled its obligations with respect to root rot under the Silviculture Prescription.

Appeals under the *Forest Act*

2000-FA-001 Robin Brekkas v. Government of British Columbia
Decision Date: July 18, 2000
Panel: Lorraine Shore, Bruce Devitt, James Hackett

This was an appeal brought by Robin Brekkas of a review decision of the Acting Regional Manager. That decision varied the determination of the District Manager by rescinding the contravention of section 65(1)(b) of the *Forest Act*, R.S.B.C. 1979, but upholding the determination that Mr. Brekkas had contravened sections 138(1), 138.1(1) and 138.1(2) for cutting Crown timber without authorization. The penalty assessment of one times stumpage, or $34,761.62, was also upheld. Mr. Brekkas appealed both the findings of contravention and the penalty.

The Commission found that, although other people were also partly responsible for the trespass (see appeal 2000-FA-002), Mr. Brekkas had an obligation to ensure that a trespass did not occur since he participated in the logging operation from beginning to end. He failed to live up to that obligation and, therefore, was in contravention of section 138(1). The Commission also found that Mr. Brekkas, as an occupier of private land adjacent to Crown land, was in contravention of section 138.1(1) for failing to inform the logger of the boundaries before authorizing any logging. The Commission rescinded the contravention of section 138.1(2) since section 138.1(1) was more pertinent.

The Commission then considered the appropriate penalty. The Commission found that the proper approach where more than one person is responsible for a trespass is to determine the penalty as a whole, and then allocate that penalty amongst those responsible based on their role in the trespass, economic benefit from the trespass, and cooperativeness during the investigation. The District Manager had applied the whole penalty to each of the parties. The Commission noted that Mr. Brekkas was primarily responsible for the trespass. If Mr. Brekkas had advised the loggers that he did not know where the boundary was, or if he had correctly informed them of where the boundary was, the trespass would not have occurred. He also initially tried to mislead the Ministry during the investigation. The Commission concluded the appropriate penalty in the circumstances was two times stumpage, or $51,226.28, with Mr. Brekkas apportioned $17,051.46 to deprive him of his profits and give him a significant monetary penalty. The appeal was allowed, in part.

2000-FA-002 Calvin Carter v. Government of British Columbia

Decision Date: July 18, 2000

Panel: Lorraine Shore, Bruce Devitt, James Hackett

This was an appeal brought by Calvin Carter of the District Manager's determination, as confirmed by the Acting Regional Manager in a review decision, that Mr. Carter had contravened sections 138(1), 138.1(2) and 65(1)(b) of the *Forest Act*, and imposing a penalty of $34,761.62 for the contravention of section 138(1). Mr. Carter appealed on the issue of penalty only.

The subject matter of this appeal was the same as that in an appeal by Robin Brekkas (see appeal 2000-FA-001). The appeals by Mr. Carter and Mr. Brekkas were heard consecutively.

Mr. Carter logged on property owned by Ms. Cushway. Mr. Carter cut and removed timber from Crown land as the result of Mr. Brekkas, who was then Ms. Cushway's common-law husband, incorrectly identifying the boundary of Ms. Cushway's property. It was the view of the Commission that the $7,349.31 profit received by Mr. Carter as a result of the contravention should be removed. The Commission found this penalty appropriate given Mr. Carter had no past record of trespass violations and was co-operative in the investigation. The Commission noted that Mr. Carter should have exercised more care in determining the boundaries, but the reliance on Mr. Brekkas, someone he considered "family", was understandable in the situation. The appeal was allowed.

2000-FA-003 Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: May 29, 2000

Panel: Toby Vigod, Katherine Lewis, David Ormerod

This was an appeal by Weyerhaeuser Company Limited of an administrative review decision upholding the Stumpage Advisory Notices ("SANs") issued by the Regional Appraisal Coordinator with respect to three cutblocks under a cutting permit within a Tree Farm Licence. The SAN were calculated by using the unincorporated community of Bamfield as the crew marshalling point. Weyerhaeuser sought an order rescinding the SANs and directing the Regional Appraisal Coordinator to recalculate the stumpage rate applicable to the three cutblocks using Cameron Shop, Weyerhaeuser's vehicle storage facility nearest to the blocks, as the crew marshalling point instead.

The Commission found that the words "city, district municipality, town or village" in section 4.6.3 of the Coast Appraisal Manual indicate that the "nearest community" must be an incorporated community. As Bamfield is not incorporated, the Commission found that it could not be used as the marshalling point in calculating the crew transportation allowance for the blocks under section 4.6.2 of the Manual. The Commission noted that Cameron Shop was the appropriate marshalling point.

The Commission rescinded the decision upholding the SAN and referred the matter back to the Regional Appraisal Coordinator with directions to use Cameron Shop as the crew marshalling point. The appeal was allowed.

2000-FA-004 Canadian Forest Products Ltd. v. Government of British Columbia

Decision Date: July 28, 2000

Panel: Barbara Fisher, Jeanette Leitch, Geza Toth

This was an appeal by Canadian Forest Products Ltd. ("Canfor") from a review decision by an Acting Regional Manager regarding a stumpage rate determination by a Regional Appraisal Coordinator. Canfor sought an order from the Commission that the calculation of stumpage be remitted back to the Regional Appraisal Coordinator for a reassessment in accordance with

the directions of the Commission, on the grounds that certain cost allowances were improperly denied.

The Commission decided that neither of the cost estimates provided by the parties were sufficient for determining the appropriate allowance for the road reconstruction. The Commission concluded that, given the particular circumstances of this road construction project, the invoiced record of actual work done ought to provide a better estimate of costs than measurements imputed more than a year after completion. However, the Commission found the invoices and data sheets provided by Canfor difficult to reconcile. The Commission directed that the appraisal sheets be recalculated based on relevant costs found in Canfor's invoices.

The Commission found that an 1800 mm culvert and 900 mm overflow culvert combination constituted a "multiple culvert" as referred to in the Interior Appraisal Manual, and directed that the cost of the culverts be allowed as a claim for an engineered structure by Canfor. The Commission also directed that Canfor be allowed to claim the "Rockdriller & Powderman" labour rate of $62.50 claimed under the Manual instead of the "Crib/Culvert Maker, Powderman" rate of $28.50. The Commission referred the stumpage rate calculations back to the Regional Appraisal Coordinator for recalculation based on the Commission's directions. The appeal was allowed, in part.

Forest Appeal Board

99-FAB-01 Weyerhaeuser Company Limited v. The Province of British Columbia (Ministry of Forests)

Decision Date: May 23, 2000

Panel: Toby Vigod, Bruce Devitt, Geza Toth

This was an appeal by Weyerhaeuser Company Limited's predecessor, MacMillan Bloedel Limited ("MB"), of a review decision that upheld three Stumpage Advisory Notices ("SANs") issued by the Regional Appraisal Coordinator. All three SANs assumed predominantly conventional logging despite the fact that MB's approved operational plans called for predominantly helicopter logging. MB was seeking an order reversing the review decision and directing the Regional Appraisal Coordinator to reappraise the stumpage rates associated with the cutting authorities.

The issue before the Board came down to an interpretation of the phrase "possible under the cutting authority" in section 4.1 of the Coast Appraisal Manual, and whether the fact that approved plans only provided for helicopter logging was determinative of the issue. The Board found that, pursuant to *Canadian Forest Products Ltd.* v. *British Columbia* (Ministry of Forests) (1998), 55 B.C.L.R. (3d) 221 (B.C.C.A.), it was bound to consider the cutting permits in concert with the *Forest Act*, *Code*, regulations and plans. The Board found that since the approved plans provided for helicopter logging, or predominantly helicopter logging, conventional logging was not possible without contravening the cutting permits or the *Code*.

The Board rescinded the SANs and remitted the matter back to the Regional Appraisal Coordinator with directions to set rates reflecting predominately helicopter logging. The appeal was allowed.

99-FAB-03 Western Forest Products Ltd. v. The Province of British Columbia (Ministry of Forests)

Decision Date: May 19, 2000

Panel: Lorraine Shore, Katherine Lewis, Stephen Potter

This was an appeal by Western Forest Product Ltd. of an administrative review decision upholding a Stumpage Advisory Notice ("SAN") from the Regional Appraisal Coordinator. The SAN excluded an additional operating cost estimate for reconstruction and replacement costs incurred by Western. These costs were incurred as a result of agreements between Western and the Ministry of Forests that Western would perform structural improvements on the Head Bay Forest Service Road. Western sought an order rescinding the SAN and directing the Regional Appraisal Coordinator to reappraise the stumpage rate associated with its cutting permit pursuant to section 4.3.1 of the Coast Appraisal Manual.

The Commission found that Western was entitled to claim the appraisal estimate for the reconstruction and replacement costs incurred. The Commission held that the Coast Appraisal Manual has two exceptions where a licensee cannot claim road reconstruction and replacement costs, and neither applied in this case. The Commission found there was no agreement by Western to forego the appraisal estimate. The Commission noted that Western did structural work and was, therefore, entitled to the reconstruction and replacement estimate. Since the Ministry has no authority to compel a licensee to perform structural work, it would be inequitable for the Ministry to convince a licensee to perform this work and then take the position after the work is done that the licensee should not be compensated for that work. The Commission further found that as Western was doing routine maintenance on roads other than the Head Bay Forest Service Road, it was entitled to the maintenance estimate as well. The Commission noted that Western was entitled to both estimates as the two estimates were intended to provide compensation for different kinds of work that Western had performed.

The Commission referred the matter back to the Regional Appraisal Coordinator for reappraisal. The appeal was allowed.

Appeals of Decisions
January 1, 2000 – December 31, 2000

Forest Appeals Commission

Alan R. Luoma v. The Province of British Columbia (Ministry of Forests) and the Forest Appeals Commission
Decision date: March 15, 2000
Court: B.C.S.C., Madam Justice Smith

On June 11, 1998, Mr. Luoma filed Notices of Appeal with the Forest Appeal Board and the Commission concerning two decisions of a Review Panel. Both Notices of Appeal stated that they were filed on behalf of Mr. Luoma by his solicitor. The only address that appeared on the Notices was the solicitor's "place of business and address for delivery". The appeals by Mr. Luoma were heard together by the Commission and the Board. The Commission and Board issued a joint decision and sent it by facsimile to the office of Mr. Luoma's solicitor on March 12, 1999. Mr. Luoma received a copy of the decision by mail on April 3, 1999. Mr. Luoma filed his appeals to the Supreme Court on April 12, 1999. The time for appeal is 21 days under both the *Forest Act* and the *Code*.

The Province of British Columbia applied to the Court to have Mr. Luoma's appeals dismissed on the grounds that he had filed them after the statutory limitation period for appealing had expired. Mr. Luoma argued that the Board and Commission decisions had not been properly served on him, and that his appeals were filed within the 21-day time period.

The Court found that the requirements with respect to delivering decisions of the Board are not found in the *Forest Act*, but in common law principles. Under common law principles, it was reasonable and fair for the Board to serve Mr. Luoma by sending a facsimile to his solicitor's office, particularly because his Notice of Appeal provided his solicitor's address as the address for delivery. The Court held that to insist that the Board should also have found the address of Mr. Luoma and sent him a registered letter or served him personally would be excessive.

The service of documents by the Commission is governed by section 164(1) of the *Code*. The Court found that the wording of section 164(1) does not exclude the possibility that the Commission is entitled to develop practices and procedures for matters such as notice, so long as those procedures are reasonable and fair. The Court found that the Commission was following practices that were both consistent with the intent of the *Supreme Court Rules*, and reasonable and fair in the circumstances, given that the solicitor had provided his address as the address for delivery.

The Court found that even if the document was not validly served to Mr. Luoma, he could not, after giving his solicitor's address as the address for delivery, argue that the Board and Commission

failed to comply with the legislation. Mr. Luoma's appeals were dismissed as out of time. The application by the Province was allowed.

Forest Appeal Board

MacMillan Bloedel Limited, Canadian Forest Products Ltd., Western Forest Products Limited, Mission Tree Farm and Richmond Plywood Corporation Limited v. The Ministry of Forests and the Appeal Board by Order in Council under section 148 of the *Forest Act*, R.S.B.C. 1996, c. 157

Decision date: June 6, 2000

Court: B.C.C.A., Chief Justice McEachern, Mr. Justice Hollinrake, Mr. Justice Finch

The Companies appealed a 1999 decision of the British Columbia Supreme Court upholding a decision of the Forest Appeal Board. The Board had affirmed the method used by the Ministry's Revenue Branch to correct a mathematical error in the calculation of stumpage rates. The stumpage rate had initially been calculated based on 11 months of harvest data rather than 12. When the error was detected, the Director of the Revenue Branch recalculated the stumpage rates using 12 months of data but did not conduct a full reappraisal.

The Supreme Court found that while the language of the Coast Appraisal Manual clearly stated that a full reappraisal was required, a strict interpretation of this requirement would lead to an absurd result. Thus, it found that the Board did not err in its interpretation of section 2.3.4(e)(iii) of the Manual. The Supreme Court also found that as the question of sufficiency of notice involves issues of both fact and law, the standard of review was one of reasonableness. The Court found that the Board's decision was not unreasonable.

On appeal to the Court of Appeal, the issues were whether: (1) the Supreme Court Justice erred in his interpretation of the reappraisal requirements, and in his interpretation of the notice requirement of the Manual; and (2) the date on which the redetermined stumpage rate was made effective was incorrect.

The Court held that the language of section 2.3.4(e)(iii) of the Manual was clear and unambiguous, so it was not open to the Supreme Court Justice to fail to apply it according to its plain meaning. The Court also found that administrative costs and inconvenience did not amount to an absurdity. The Court directed the Ministry to conduct a reappraisal to correct the error.

On the second issue, the Court found that determining whether the facts, as found by the Board, conform to statutory notice requirement in the Manual is a question of law. Therefore, the Board's decision in that respect should be reviewed on a standard of correctness. The Court found that the Board erred on the question of when notice of the error was given, and ordered that the reappraisal be given effect as of April 1, 1997, and not June 1, 1997, as used by the Board and the Revenue Branch. The appeal was allowed.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission during the period from January 1, 2000 to December 31, 2000.

A total of 18 appeals were filed with the Commission in 2000. Eight of these appeals were filed under the *Code*, and ten were filed under the *Forest Act*. By the end of 2000, no appeals had been rejected, one had been withdrawn, three had been abandoned, and seven had been heard.

The Commission issued ten decisions in 2000, including two consent orders.

Appeals filed	18
Appeals filed under the *Code*	8
Appeals filed under the *Forest Act*	10
Appeals rejected	0
Appeals withdrawn	1
Appeals abandoned	3
Total hearings held	7
Oral hearings held	7
Written hearings held	0
Decisions issued	10
Hearings pending from appeals filed in 2000	8
Decisions pending from hearings held in 2000	1

◀ This table provides a summary of the appeals filed with this office and their status. Note that hearings held and decisions issued in 2000 do not necessarily reflect the number of appeals filed in 2000. Of the ten decisions issued in 2000, four were in relation to appeals filed in 1999, and six were in relation to appeals filed in 2000.

Number of times sections of the *Code* and its regulations were at issue in appeals filed with the Commission during report period

Section of the *Code*		
41	Approval of plans by district manager or designated environment official	1
51	Previously unidentified resource features	1
67	Timber harvesting	2
70	Silviculture prescriptions	1
96	Unauthorized timber harvest operations	4
97	Private land adjacent to Crown land	1
Section of the *Forest Road Regulation* (B.C. Reg. 106/98)		
13	Drainage construction	1
Section of the *Operational Planning Regulation* (B.C. Reg. 107/98)		
14	Watershed assessments required before review of forest development plans	1
18	Map and information requirements for all forest development plans	1

▲

This table provides an overview of the determinations that were at issue in the appeals filed under the *Code* in 2000.

Number of times sections of the *Forest Act* were at issue in appeals filed with the Commission during report period

Section of the *Forest Act*, R.S.B.C. 1979, c. 140		
65	Timber marks	2
138	Prohibited timber cutting	2
138.1	Private land adjacent to Crown land	2
Section of the *Forest Act*, R.S.B.C. 1996, c. 157		
105	Stumpage rate determined	7

▲

This table provides an overview of the determinations that were at issue in the appeals filed under the *Forest Act* in 2000.

Parties to Forest Appeals Commission Appeals

Appellant	Number of times filed an appeal
Robin Brekkas	1
Canadian Forest Products Ltd.	1
Calvin Carter	1
James Davidson	1
Forest Practices Board	2
International Forest Products Ltd.	1
Larry Jarnagin	1
Kemess Mines Inc.	1
Alan Kendall	1
Klaus Orleans	1
Laurie Parker	1
Royal Oak Mines Ltd.	1
Slocan Forest Products Ltd.	1
TFL Forest Ltd.	1
Weyerhaeuser Company Ltd.	4

Third Party	Number of times given third party status in appeals filed
Crestbrook Forest Industries Ltd.	1
Dawson Harbour Logging Company Ltd.	1
Forest Practices Board	2
Husby Forest Products Ltd.	1
Naden Harbour Timber Ltd.	1
Sitkana Timber Ltd.	1
Timber West Forest Ltd.	1

Intervenor	Number of times given intervenor status in appeals filed
	0

Forest Appeal Board

The following table provides information on the appeals heard by the Board during the period from January 1, 2000 to December 31, 2000

No appeals were filed with the Board in 2000. Appeals under the *Forest Act* and *Range Act* are now under the jurisdiction of the Commission.

The Board issued two decisions in 2000.

Total hearings held	2
Oral hearings held	2
Written hearings held	0
Decisions issued	2
Hearings pending from appeals filed in 1999	0

▲ This table provides a summary of the appeals heard by the Board and their status. All of the decisions issued in 2000 were from appeals filed in 1999.

◀ These tables show the number of times a particular party has been involved in an appeal over the report period. The tables include parties to appeals under both the Code and the *Forest Act*. Appeals were filed by both individuals and forest companies.

During the report period, third party status was granted on three occassions and there were no applications for intervenor status.

APPENDIX I

Legislation and Regulations

The legislation contained in this report was up to date at the time of publication. Please be aware that subsequent to this publication, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Definitions

125.1 In this Division:

"review official" means

(a) a person employed in any of the ministries who is designated by name or title to be a review official by the deputy minister of that ministry, or

(b) for a review requested under section 128(2), a person employed in the Ministry of Forests who is designated by name or title to be a review official by the deputy minister of the Ministry of Forests.

Determination not effective until proceedings concluded

126 (1) A determination that may be reviewed under section 127 does not become effective until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the chief forester may order that a determination, other than a determination to levy a penalty under section 117(1), 118(4) or (5) or 119, is not stayed or is stayed subject to conditions, on being satisfied that a stay would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made

(a) under section 123(1), or

(b) under prescribed sections or for prescribed purposes.

Person subject to a determination may have it reviewed

127 (1) A person who is the subject of a determination under section 82, 95(2), 99(2), 101(2), 102(3), 106(1), 117 to 120 or 123(1) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.

(2) The person must ensure that the request for review complies with the content requirements of the regulations.

(3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.

(4) Before or after the time limit in subsection (3) expires, the review official may extend it.

(5) A person who does not deliver the request for review within the time specified loses the right to a review.

Forest Practices Board may have determination or decision reviewed

128 (1) The board may request a review of

(a) a determination made under section 82, 95(2) or 117 to 120,

(b) a failure to make a determination under section 82, 95(2) or 117 to 120, and

(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.

(2) To obtain a review of a failure to make a determination, the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been the subject of the determination.

(3) To obtain a review of a determination, the board must deliver a request for review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.

(3.1) The board must ensure that the request for review complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (3) expires, the regional manager may extend it.

(5) If the board does not deliver the request for review within the time specified, the board loses the right to a review.

Review

129 (1) A review official who receives a request for review must ensure that the review is conducted by one or more persons who

(a) are employed under the *Public Service Act*, and

(b) have not made the determination under review, or are not the persons who failed to make a determination, if the review is for that reason, or have not participated in an investigation on which the determination was based.

(2) The reviewer may decide the matter, based on one or more of the following:

(a) the request for review and the ministries' files;

(b) the request for review, the ministries' files and any other communication with persons the reviewer considers necessary to decide the matter, including communicating with the

person or board requesting the review and with the person who made or failed to make the determination;

(c) an oral hearing.

(3) After a request for review is delivered under section 127 or 128,

(a) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested a review, and

(c) the government must disclose the facts and law on which the person, board and government will rely at the review, if required by the regulations and in accordance with the regulations.

(4) If permitted by, and in accordance with, the regulations, the reviewer may refer to the commission a question of law raised in a review, if there is agreement to the referral by

(a) the person who is the subject of the determination or would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested the review, and

(c) the government.

(5) The reviewer may make a decision

(a) confirming, varying or rescinding the determination under review,

(b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or

(c) making a determination, if the review concerns the failure to make a determination.

(6) The reviewer must give a written decision to the person who is the subject of the determination or, for a review of a failure to make a determination, the person who would be the subject of a determination, if made, and the board within

(a) the prescribed period after the request for review was recieved by the review official, or

(b) another period agreed to by

(i) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(ii) the board, if, under section 128, the board requested a review, and

(iii) the government.

(7) Despite subsection (6)(a), if the reviewer determines that the request for review does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under subsection (3), the prescribed period under subsection (6)(a) does not begin until a request for review is received that does comply with those requirements, or the facts and law are dis closed as required under subsection (3).

Determinations that may be appealed

130 (1) Subject to subsection (3), a person who is the subject of a determination referred to in

(a) section 127, or

(b) section 129(5)(c)

may appeal the determination to the commission.

(2) Subject to subsection (3), the board may appeal to the commission

(a) a determination referred to in section 128(1)(a),

(b) a failure to make a determination referred to in section 128(1)(b),

(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and

(d) any determination for which a review decision has been given under section 129(6).

(3) No appeal may be made under subsection (1) or (2) unless the determination or failure to make a determination has first been reviewed under section 129.

(4) If a determination is varied by the reviewer, the appeal to the commission is from the determination as varied.

(5) If, as a result of a review of a failure to make a determination, the reviewer makes a determination, the appeal to the commission is from the determination made by the reviewer

Appeal

131 (1) To initiate an appeal under section 130, the person referred to in section 130(1) or the board, no later than 3 weeks after receiving the review decision under section 129(6), must deliver to the commission a notice of appeal and

(a) in the case of a determination referred to in section 130(1)(a) or 130(2)(a) (c) or (d), enclose a copy of the determination, and

(b) in the case of the determination referred to in section 130(1)(b) or (2)(b), enclose a copy of the reviewer's determination.

(2) If the appeal is from a determination as varied under section 129, the person or board bringing the appeal must include a copy of the review decision with the notice of appeal given under subsection (1).

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal

Referral of questions of law

131.1 A hearing regarding a question of law referred under section 12 (4) must be conducted in accordance with the regulations.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

138 (1) On an appeal of a determination or of the confirmation, variance or rescission of a determination, the commission may consider the findings of

(a) the person who made the determination that is being appealed, or

(b) the reviewer.

(2) On the appeal, the commission may

(a) confirm, vary or rescind the determination appealed from, or

(b) refer the matter with or without directions back to the person

(i) who made the initial determination, or

(ii) in the case of a determination made under section 129(5)(c), the reviewer who made the determination.

(3) On considering a question of law referred to the commission under section 129(4), the commission may decide the question of law and the decision is binding

(a) on the reviewer for the purposes of the review in question, and

(b) on the commission for the purposes of an appeal concerning the determination or the failure to make a determination that was subject of the review in question.

(4) The commission may order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9
FOREST APPEALS COMMISSION

Forest Appeals Commission Continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act* and *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.

(3) Appointments under subsection (2) may be for a term of up to 3 years.

(4) The Lieutenant Governor in Council may

(a) appoint a person as a temporary member to deal with a matter before the commission, or for a specified period or during specified circumstances, and

(b) designate a temporary member as chair.

(5) A temporary member has all the powers and may perform all the duties of a member of the commission during the period, under the circumstances or for the purpose of the appointment.

(6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the members of the commission.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Application of other sections

196 Sections 191 and 193 apply to the commission.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of

(a) a district manager or regional manager, under the provisions referred to in section 143(1)(a) and (b),

(b) an employee of the ministry, under section 105(1),

(c) the chief forester, under section 60(2), 68, 70 (1), 77(1)(a) or 112(1), and

(d) the chief forester, by way of a determination under section 66(4)(b) or (5)(b), of the area of Crown land described in that section.

(2) No appeal may be made under subsection (1)(a) and (b) unless the determination, order or decision has first been reviewed under Division (1) of this Part.

(3) If a determination, order or decision referred to in subsection (1)(a) is varied by the person conducting a review under section 145, the appeal to the commission is from the determination, order or decision as varied under that section.

(4) If this Act gives a right of appeal, this Division applies to the appeal.

Notice of appeal

147 (1) If under the provisions referred to in section 146 a determination, order or decision is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after the date the determination, order or decision is served on the person under the provisions referred to in section 146(1)(c) and (d), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under sub section (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements

of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the atten dance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 (1) The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 (1) If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Range Act

Review and appeal

41 (1) A review may be required of a determination, order or decision of

(a) a forest officer under section 34, and under a licence or permit, and

(b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.

(2) A review of the determination, order and decision referred to in subsection (1)(a) and (b) is to be conducted by the regional manager.

(3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.

(4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.

(5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal to the Forest Appeals Commission is from the determination, order or decision as varied.

(6) The procedures and powers in respect of reviews and appeals under the *Forest Act* apply to reviews and appeals under this section.

Appeal from section 26 decision

42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.

(2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26(2), written notice of the appeal on the district manager who made the decision.

(3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.

(4) The minister, or a person designated in writing by the minister, must promptly

(a) hear the appeal,

(b) confirm, reverse or vary the decision of the district manager, and

(c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

43 Unless the minister orders otherwise, a review or an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being reviewed or appealed.

APPENDIX II

Administrative Review and Appeal Procedure Regulation

Part 1

DEFINITIONS

Definitions

1 (1) In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of the Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41(4) of the Act, or

(c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131(1) of that Act, and includes the board if the board initiates an appeal under section 131(1) of that Act;

"determination" means

(a) a determination, order or decision referred to in section 143(1) or 146 of the *Forest Act*,

(b) a determination, order or decision referred to in section 41(1) of the *Range Act*, or

(c) a determination referred to in section 127(1), 128(1) or 129(5)(c) of the *Forest Practices Code of British Columbia Act*;

"requesting person" means a person that requests a review of a determination under the *Forest Act*, *Range Act* or *Forest Practices Code of British Columbia Act*, and includes the board if the board requests a review of a determination or of a failure to make a determination under the *Forest Practices Code of British Columbia Act*;

"reviewer" means

(a) for a review under the *Forest Act*,

(i) the regional manager if the review concerns a determination referred to in section 143(1)(a) or (c) of the *Forest Act*,

(ii) the chief forester if the review concerns a determination referred to in section 143(1)(b) of the *Forest Act*, or

(iii) the person to whom, under section 143(3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,

(b) for a review under the *Range Act*,

(i) the regional manager if the review concerns a determination referred to in section 41(1)(a) or (b) of the *Range Act*, or

(ii) the person to whom, under section 41(3) of the *Range Act*,

the regional manager delegates the power to decide the review, or

(c) for a review under the *Forest Practices Code of British Columbia Act*, "reviewer" as defined in section 1(1) of that Act.

(2) In Division 4 of Part 6 of the *Forest Practices Code of British Columbia Act*, "ministries" means the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines.

Part 2

ADMINISTRATIVE REVIEW PROCEDURE

Division 1 – Requesting a Review

Board may request review of plan approvals

2 The board may request a review of a determination with respect to approval of a forest development plan, range use plan or amendment to either of those plans, if the board believes that in relation to the preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.

Request for review

3 (1) A request for review of a determination or a failure to make a determination must be signed by, or on behalf of, the requesting person and must contain all of the following information:

(a) the name and address of the requesting person, and the name of the person, if any, making the request on that person's behalf;

(b) the address for service of the requesting person;

(c) the grounds for review;

(d) a statement describing the relief requested.

(2) In addition to the requirements of subsection (1), a request for review delivered to a reviewer by the board must also include

(a) for the review of a determination or of a failure to make a determination, the name of the person whose determination or failure to make a determination is the subject of the request, and

(b) with respect to approval of a forest development plan, range use plan or amendment to either of those plans, the name of the agreement holder responsible for preparing the plan or amendment that is the subject of the request for review.

Division 2 – Procedures after Receipt of Request for Review under the *Forest Act* and *Range Act*

Reviews conducted under the *Forest Act* and *Range Act*

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

(3) The reviewer must serve a copy of the request and any notice of deficiency to the person who made the determination that is the subject of the request.

Notice of review

7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6(3), setting out,

(a) in accordance with section 145(1) of the *Forest Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

8 The prescribed period for the purposes of section 145(3)(a) of the *Forest Act* is 60 days.

Division 3 – Procedures after Receipt of Request for Review under the *Forest Practices Code of British Columbia Act*

Reviews conducted under the *Forest Practices Code of British Columbia Act*

9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

10 (1) The reviewer must acknowledge in writing any request for review.

(2) If a request for review is

(a) made by a requesting person, other than the board, the reviewer must give a copy of the request to

(i) the person who made the determination that is the subject of the request, and

(ii) the board, or

(b) made by the board, the reviewer must give a copy of the request to the person who made or failed to make the determination that is the subject of the request.

Deficient request for review

11 (1) If a request for review does not comply with section 3, the reviewer may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer gives a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

Designation of reviewer

12 On receipt of a request for review, the reviewer must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10(2), setting out,

(a) in accordance with section 129(2) of the *Forest Practices Code of British*

Columbia Act, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

14 The prescribed period for the purposes of section 129(6)(a) of the *Forest Practices Code of British Columbia Act* is 60 days.

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Notice of appeal

15 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

16 (1) If a notice of appeal does not comply with section 15, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

17 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and

(b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in addition to the persons referred to in section 131(6) of that Act.

Procedure following receipt of notice of appeal

18 (1) Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) subject to subsections (2) and (3), set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.

(2) The prescribed period for the purposes of section 148(1)(b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.

(3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

19 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

20 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

21 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to take part.

Transcripts

22 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

23 The prescribed period for the purposes of

section 149.1(3) of the *Forest Act* is 21 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF THE FOREST APPEALS COMMISSION

Content

24 (1) By March 31 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated during the year,

(b) the number of appeals completed during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

Part 5

TRANSITION

Administrative appeals

25 If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.